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SUBJECT: KAZAKHSTAN: 2007 INVESTMENT DISPUTES REPORT UPDATE

REF: State 55422

11. (SBU) This cable responds to reftel. The United States Government is aware of two (2) claims by United States persons that are outstanding against the Government of Kazakhstan (GOK).

12. (SBU) a. Claimant A

b. 1996

c. Although it has faced a number of regulatory issues, Claimant A is currently dealing with two disputes that may rise to the level of expropriation.

Claimant A's dispute on electricity deliveries with the state-owned power transmission monopoly (now known as KEGOC) and the Government of Kazakhstan (GOK) dates back to 1996. Claimant A ultimately signed two memoranda of understanding (MOUs) with KEGOC and the GOK, outlining how the dispute would be resolved. However, the claimant states, as of early June 2007, KEGOC continues to be in breach of some of the contracts arising from the MOUs. According to Claimant A, this contractual breach by KEGOC amounts to contract repudiation.

Although KEGOC and the GOK have submitted to international arbitration (which is currently ongoing), Claimant A is concerned that KEGOC may not comply with the arbitration decisions. Furthermore, Claimant A states that KEGOC has, on numerous occasions, used underhanded methods to pressure the Claimant. Such actions often involve making it difficult for third parties to conduct business with Claimant A.

Claimant A states that discriminatory regulatory actions by regional authorities also amount to expropriation. According to the Claimant, a regional government - with the support of some officials in the central government - has forced the Claimant to choose between lowering its rates (which would be politically expedient to the local authorities) or facing severe regulatory actions. Claimant A maintains that this is an example of tactics, which sometimes include threats of criminal prosecution, to extract financial benefits from the Claimant.

13. (SBU) a. Claimant B

b. 2001

c. In July 2001, the Kazakhstan Ministry of State Revenue (MSR) performed an audit and determined that Claimant B, a subsidiary of a U.S. parent company, owed \$29 million in taxes. The assessment was based on MSR's finding that \$100 million received by the Claimant from a customer as reimbursement for capital expenditures incurred by claimant in modifying a barge rig, was taxable income. (The customer was the operating consortium of the offshore Kashagan oil field.) Claimant B challenged the decision in Astana City Court, which ruled in the claimant's favor, holding that the reimbursements were not, in fact, taxable income. Following an appeal by the MSR,

Kazakhstan's Supreme Court ruled in favor of claimant in March 2002.

The Kazakhstani tax authorities have persisted in appealing the case in subsequent years, bringing the case to the Supreme Court a total of four times. In May 2006, the Supreme Court ruled in favor of the Kazakhstani tax authorities. Claimant B subsequently contacted the USG. In early June 2006, the Claimant's attorneys had successfully filed a stay of the collection process triggered by the Supreme Court decision, and were planning an appeal. In April 2007, the Kazakhstani Supreme Court granted to Claimant B a Supervisory Panel Appeal. As of early June 2007, Claimant B is awaiting the consideration of its appeal by the court.

14. (SBU) Claimant A: AES Corp.

Claimant B: Parker Drilling, Inc.

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